LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
DEC 1 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term 1965
No..... 787

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a national banking association,
Petitioner,

vs.

FEDERAL RESERVE BANK OF SAN FRANCISCO,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

SAMUEL B. STEWART,
ROBERT H. FABIAN,
HARRIS B. TAYLOR,
GEO. L. BECKWITH,
650 South Spring Street,
Los Angeles, Calif. 90014,
Attorneys for Petitioner.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

SUBJECT INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Regulations involved	2
Statement of the case	4
Reasons for granting the writ	6
Argument	7
Conclusion	10
Appendix A. Opinion of United States Court of Appeals for the Ninth Circuit	1
Memorandum Opinion for Use in Preparation of Proposed Findings of Fact, Conclusions of Law, and Judgment	7
Appendix B. Pertinent Regulations involved	16

TABLE OF AUTHORITIES CITED

Cases	Page
Bank of America National Trust and Savings Association v. Federal Reserve Bank of San Francisco, 349 F. 2d 565	6
Cooke v. United States, 91 U.S. 389	7
Price v. Neal, 3 Burrow 1354 (Eng. 1762)	8
United States v. Bank of New York, 219 Fed. 648	8, 9
United States v. Chase National Bank, 252 U.S. 45	9
United States of America v. Guaranty Trust Company of New York, 293 U.S. 340	7
Regulations	
Code of Federal Regulations, Title 31 (1949), Sec. 202.5	7
Code of Federal Regulations, Title 31 (1949, Rev. 1965), Sec. 202.25(d)	2, 3
Code of Federal Regulations, Title 31 (1949, Rev. 1965), Sec. 202.25(e)(1)	8
Code of Federal Regulations, Title 31 (1949, Rev. 1965), Sec. 202.25(e)(1)(i)(ii)(iv)	3
United States Treasury Department Regulations, (Circular 176, 1945), Sec. 25	2
United States Treasury Department Regulations (Circular 176, 1945), Sec. 25(a)(4)	8
United States Treasury Department Regulations (Circular 176, 1945), Sec. 25(a)(1)(2)(4), pp. 12-13	3
Statutes	
United States Code, Title 8, Sec. 1254(1)	2
United States Code, Title 12, Sec. 632	6

IN THE

Supreme Court of the United States

October Term 1965
No.....

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a national banking association,

Petitioner,

vs.

FEDERAL RESERVE BANK OF SAN FRANCISCO,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner Bank of America National Trust and Savings Association, hereinafter referred to as the "Bank", prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above case on August 3, 1965.

Opinions Below.

The opinion of the Court of Appeals (Appendix A, *infra* p. 1) is reported in 349 F. 2d 565 (9th Cir. 1965). The opinion of the District Court, Southern District of California, Central Division is not reported, Memorandum Opinion (Appendix A, p. 7) was filed June 19, 1964, and judgment entered July 7, 1964.

Jurisdiction.

The judgment of the Court of Appeals was entered on August 3, 1965. By order of Mr. Justice Douglas, entered the 26th day of October, 1965, time for filing petition for certiorari was extended to and including December 1, 1965. The jurisdiction of the court is invoked under 8 U.S.C. §1254(1).

Questions Presented.

Whether the courts below, in an action brought by petitioner Bank against respondent to recover the amount of a charge made by respondent to the account of petitioner with respondent, for forged checks drawn on the Treasurer of the United States, cashed by petitioner and forwarded through respondent to the Treasurer for payment, and for which checks respondent gave credit to petitioner erred in holding,

1. The Treasurer of the United States is not bound to return forged checks drawn on the Treasurer by midnight of the next business day after receipt.

2. The checks were returned by the Treasurer on "first examination."

3. "First examination" did not take place on March 27, 1961.

4. "First examination" was not completed until March 30, 1961.

Regulations Involved.

Section 25 of Circular 176 (1945) of United States Treasury Department Regulations, 31 CFR 202.25-(d) (1949, Rev. 1965) provides in part as follows:

> "The Treasurer of the United States reserves the right to examine, and to refuse payment of all Government checks handled by Federal Reserve Banks in accordance with this section."

Other pertinent provisions of Circular 176, Section 25(a)(1)(2)(4), pp. 12-13 (31 CFR 202.25(e)(1)-(i)(ii)(iv) (1949, Rev. 1965) and pertinent provisions of Regulation J (1949) of the Board of Governors of the Federal Reserve System, Section 5(4), p. 4 (12 CFR 210.5(d) 1949, Rev. 1963) are printed in Appendix B, *infra* pp. 16-17.

Respondent's Circular 90 of August, 1960, at page 4 provides:

> "United States Government checks will be handled in accordance with, and subject to the provisions of, Treasury Department Circular No. 176 in effect at the time such items are received by this bank; and with respect to matters not covered by such circular, the provisions of Regulation J and this circular *and time schedules* shall be deemed applicable to all Government checks. Credit for Government checks will be given in accordance with this bank's time schedules and will be subject in all cases to examination and payment by or on behalf of the Treasurer of the United States." (Emphasis added.)

and at page 7 under the heading "Instructions to Collecting and Remitting Banks" Circular 90 provides:

> "Remittances for this bank's cash letters should be made on the day of receipt, at par in immediately available or acceptable funds. The remittance advice form which we furnish with each cash letter should be used for that purpose and for returning unpaid items.
>
> "Each bank returning cash items for credit or refund represents that such items are returned within the time allowed by paragraph (4) of Section 5 of Regulation J or the applicable law; and any

refund, deduction or credit made, allowed or given by this bank for any item returned after the time allowed by Regulation J or the applicable law may be recovered or revoked if such late return is not acquiesced in by the sending bank. A bank may, however, return to this bank without entry a cash item which it has failed to return in time, with a request that the sending bank be asked to make refund therefor; in which event this bank will make refund to the returning bank and charge the sending bank only if the latter specifically authorized this bank to do so."

Statement of the Case.

On March 6, 1961, one Carl Witten endorsed and negotiated to the South Santa Ana, California, Branch of petitioner Bank check No. 277458 drawn on the Treasurer of the United States in the amount of $8,277.66. The Bank paid to Witten $5,000.00 cash and credited $3,277.66 to a savings account. On the same day Witten endorsed and negotiated to the Santa Ana, California, Main Branch of the Bank check No. 277460 drawn on the Treasurer of the United States in the amount of $8,365.34. The Bank paid to Witten $3,000.00 cash and credited $5,365.34 to a savings account. On March 7, 1961, Witten withdrew $3,000.00 from this account [R. 141-145].

On March 7, 1961, Witten endorsed and negotiated to the Orange, California, Branch of the Bank check No. 277482 drawn on the Treasurer of the United States in the amount of $8,023.66. The Bank paid $3,500.00 cash and credited $4,523.66 to a savings account. The cash disbursements to Witten totalled $14,500 [R. 141-145].

The three checks were all purportedly signed by one S. Goens, an authorized Marine Corps Disbursing Of-

ficer at Garden City, Long Island, New York. The signature of S. Goens appearing on each of these checks as drawer was a forgery [R. 141-145].

On March 7, 1961, the Los Angeles Branch of respondent received checks No. 277458 and No. 277460 from the Los Angeles Central Office of petitioner. On that date petitioner's account with respondent was credited with the amount of these two checks. On March 9, 1961, the Los Angeles Branch of respondent received check No. 277482 and petitioner's account with respondent was credited with the amount of the check [R. 141-145].

On March 13 and 14, 1961, the three checks were charged by respondent to the account of the Treasurer of the United States and forwarded to the Treasurer in Washington, D.C. for payment [R. 141-145].

On March 8, 1961, the Treasurer of the United States was advised by the Marine Corps that the three checks, among others, were missing and to stop payment [R. 141-145].

The checks were received in the Treasurer's Office in Washington, D.C. on March 20 and 21, 1961. After receipt of the checks by the Treasurer's Office, the checks were electronically processed and on March 27, 1961, physically examined by a clerk to ascertain whether or not the checks had been altered and if they bore a signature. After this examination the checks were replaced in electronic data processing machines for further processing and examination [R. 141-145].

Petitioner was not notified by respondent or anyone until March 31, 1961, by telephone that payment by the Treasurer of the checks was refused because the drawer's signature was forged. On April 3, 1961, respondent

debited petitioner's account with the amount of the checks and notified petitioner [R. 141-145].

On August 16, 1962, petitioner filed its complaint against respondent in the District Court of the United States, Southern District of California, Central Division to recover the sum of $14,500 plus interest from April 3, 1961. The jurisdiction of the United States District Court was invoked pursuant to Title 12, Section 632 of the United States Code [R. 2].

After motions for summary judgment by both plaintiff and defendant in the trial court [R. 68, R. 13] were denied [R. 93] defendant filed its answer denying the allegations of the complaint [R. 95].

After trial, judgment was entered for the defendant on July 6, 1964 [R. 169]. Upon appeal by the Bank to the United States Court of Appeals for the Ninth Circuit, the court on August 3, 1965, affirmed the judgment of the trial court, in *Bank of America National Trust and Savings Association v. Federal Reserve Bank of San Francisco,* 349 F. 2d 565 (9th Cir. 1965).

No question of fact is involved.

Reasons for Granting the Writ.

1. The case involves a federal question of substance, under regulations and circulars of the respondent and of the United States Treasury Department, affecting checks drawn on the Treasurer of the United States which are handled and cashed by a large segment of the banking industry. The question has not been but should be settled by this court.

2. The lower courts' decisions are in conflict with and contrary to the applicable regulations and circulars of respondent and the Treasurer of the United States.

ARGUMENT.

I.

When the United States becomes a party to commercial paper it incurs all the responsibilities of a private person under the same circumstances. *Cooke v. United States,* 91 U.S. 389 (1875). The rights of a holder of checks drawn upon the Treasurer of the United States are the same as those accorded by commercial practice of private individuals. *United States of America v. Guaranty Trust Company of New York,* 293 U.S. 340 (1934). It is therefore the established law of the land that as to the rights of a holder of a check drawn on the Treasurer of the United States there is no distinction between private checks and Government checks.

Circular 90, *supra,* of respondent sets forth the basis on which it will, for the convenience of banks generally, handle the collection and payment of checks drawn on the Treasurer of the United States. If petitioner is bound by the provisions of respondent's Circular 90, then it necessarily follows that respondent is also bound by them.

Respondent's Circular 90 expressly provides that "with respect to matters not covered by such circular," [referring to Treasury Department Circular 176, 31 CFR 202.5 (1949),] "the provisions of Regulation J and this Circular and time schedules shall be deemed applicable to all Government checks." There is nothing in Circular 176 which refers to the time within which a check drawn on the Treasurer may be returned. Therefore, the time within which a check may be returned is not a matter covered by Circular 176 and under respondent's Circular 90 we must look to Regulation J of the Federal Reserve Board (12 CFR 210.5 1949—

Rev. J 1963 Appendix B). Regulation J limits the time to midnight of the next business day following receipt. The lower courts therefore both ruled contrary to the express provisions of the circulars and regulations under which both petitioner and respondent are bound.

The Court of Appeals in its opinion at page 566 recognizes the fact that there is no express provision as to the time within which the Treasurer must make his "first examination." The Court in effect held that by virtue of Section 25 (a)(4) of Circular 176, 31 CFR 202.25 (e)(1) Appendix B the Treasurer has a period of time lasting until after he has made a "first examination" within which to reject a check and implies that the Treasurer must have a reasonable or sufficient time within which to conduct the first examination. It is petitioner's contention that in putting this interpretation on the cited Regulation the Court of Appeals and the trial court committed serious error.

Such an interpretation is contrary to the very provisions of the Regulation. The Regulation does not purport to establish the time within which the Treasurer must reject a check nor does it in any way imply that the Treasurer has until *after* a "first examination" to reject a check. Nor does the Regulation refer to examination for forgery. It is not a provision granting to the Treasurer certain rights, which is the effect of the decision of the lower courts, but is a provision placing a prohibition on the Treasurer; *i.e.*, that he cannot reject a check upon which a forgery was not discovered on the first examination. This regulation is but a recognition of the rule of *Price v. Neal*, 3 Burrow 1354 (Eng. 1762) that a drawee is bound to know the signature of the drawer. See also *United States v. Bank*

of New York, 219 Fed. 648 (2nd Cir. 1914), *United States v. Chase National Bank,* 252 U.S. 45 (1920).

II.

It is petitioner's contention that both lower courts also erred in holding that a "first examination" did not take place on March 27, 1961. The checks were physically examined by a clerk in the Treasurer's Office on March 27 for signature and to determine whether or not they had been raised. That was the "first examination" and the checks were not rejected at that time. The provisions of the regulation are clear and unambiguous. The decisions below amount to a holding that the Federal Reserve Board, in promulgating the regulations, did not mean what it said, in unambiguous language, but that what it really meant to provide for was a series of examinations, and therefore the "first examination" did not take place until March 31. This is pure sophistry.

Banks, in the handling of private checks, know with reasonable certainty that unless the check is returned by the drawee within a certain time it cannot later be rejected for forged signature of the drawer. The banks know that after a certain period of time they can permit withdrawals from depositors' accounts against deposits of private checks to the account without fear that the checks will be later dishonored because of forged signature of the drawer. The effect of the decisions of the lower courts in this case is to completely remove that certainty in the case of checks drawn on the Treasurer of the United States. It results in complete uncertainty and places upon the banks the unfair burden of guessing when the Treasurer is likely to get around to his "First Examination." The length of time may, under

the rulings below, be short or long depending upon the time of the month, and an evaluation of such imponderables as the anticipated fluctuating volume of checks being processed through the Treasurer's sophisticated electronic devices. No other drawee is given such a benefit, and there is no valid reason for the Treasurer to have it.

As the trial court said in its Memorandum Opinion (Appendix A):

> "It is understandable that the fact that the Treasurer is not bound by the 'midnight of the following day' rule would come as a shock to banks, all of whom are bound by rigid statutes and Federal Reserve Bank Regulations re return of checks drawn on other banks as drawee."

Conclusion.

It is respectfully submitted that the Writ of Certiorari should be granted and the judgment of the Court below should be reversed.

Respectfully submitted,

SAMUEL B. STEWART,
ROBERT H. FABIAN,
HARRIS B. TAYLOR,
GEO. L. BECKWITH,
Attorneys for Petitioner.

APPENDIX A.

Opinion of United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals, for the Ninth Circuit.

Bank of America National Trust and Savings Association, a national banking association, Appellant, vs. Federal Reserve Bank of San Francisco, Appellee. No. 19,650.

[August 3, 1965]

Appeal from the United States District Court for the Southern District of California, Central Division.

Before: Hamley and Jertberg, Circuit Judges, and Jameson, District Judge

Hamley, Circuit Judge:

Bank of America National Trust and Savings Association paid out $14,500 to one Carl Witten in cash in exchange for three checks purportedly drawn on the Treasurer of the United States. It forwarded the checks to the Treasurer for payment via the Los Angeles office of the Federal Reserve Bank of San Francisco (Reserve). Reserve initially credited Bank of America's account with the face amount of those checks. It later withdrew that credit when the Treasurer, upon his examination of those checks, refused payment on grounds of forgery. Bank of America then instituted this suit against Reserve under 48 Stat. 184 (1933), as amended, 12 U.S.C. § 632 (1958) to recover the amount lost on the checks. Following a trial without a jury the district court entered judgment for Reserve. Bank of America appeals.

Appellant advances two arguments in opposition to the judgment. The first is that, under applicable regulations, the Treasurer and Reserve have until midnight of the next succeeding business day after the day of receipt in which to reject checks drawn on the Treasurer. It is conceded that the Treasurer did not reject these checks within that period. The Treasurer's office received the checks on March 20 and 21, 1961. Not until March 30, 1961, did the Treasurer discover that the checks had been forged and notify Reserve by telegram that payment was refused. On March 31, 1961, Reserve notified Bank of America by telephone of the Treasurer's action.

Reserve's Circular 90 of August, 1960, at page 4 provides that United States Government checks will be handled in accordance with the provisions of Treasury Department Circular 176, 31 C.F.R. § 202.25. Circular 90 further provides that with respect to matters not covered by Circular 176, ". . . the provisions of Regulation J and this circular and time schedules shall be deemed applicable to all Government checks." Section 25(a)(4) of Circular 176, 31 C.F.R. § 202.25(e)(1)-(iv), provides that in cases of checks raised or bearing a forged signature of the drawer, "not discovered upon first examination by the Treasurer," credit will be given in the Treasurer's account only when payments are made by the indorser of the checks.

Circular 176 contains no express provision as to the time within which the Treasurer must make his "first examination." Bank of America argues from this that the quoted provision of Circular 90 therefore makes it necessary to apply a time limit derived from the provisions of "Regulation J and this Circular and time sched-

ules." Section 5(4) of Regulation J, 12 C.F.R. 210.5-(d) provides that any check which a Federal Reserve Bank presents to the drawee bank for payment or collection, and for which remittance or settlement is made by the drawee on the day which it receives such check ". . . may be returned for credit or refund at any time prior to midnight of the drawee's next business day following such day of receipt. . . ."

While Circular 176 contains no express provision as to the time within which the Treasurer must reject a tendered check, it does provide, in effect, that he may reject a forged check "upon first examination." The necessary implication from this provision is that the Treasurer is to have sufficient time within which to conduct the first examination. See *Cook v. United States,* 91 U.S. 389, 397. Because of this implicit provision in Circular 176 for a reasonable time within which to make such an examination, the quoted provision of Circular 90 with regard to matters not covered by Circular 176 is inapplicable. Thus the "midnight of the drawee's next business day" rule may not be invoked in this case.[1]

Appellant's second argument in opposition to the judgment is that the Treasurer did not discover the forgeries "upon first examination" as required under Circular 176.

Because of the great number of Government checks, aggregating 450,000,000 in 1961 alone, the examina-

---

[1]The district court found that the Treasurer did conduct the first examination with reasonable dispatch. That finding is not under attack on this appeal.

We find it unnecessary to consider the four additional reasons advanced by appellee why appellant's one-day limit argument is without merit.

tion of Government checks in the office of the Treasurer is conducted as much as possible by electronic equipment. Each check is first imprinted with a locator number so that it can be discovered and withdrawn for a physical inspection if necessary. The information from the face of the check (account number, amount, disbursing office, etc.) is then automatically recorded on magnetic tape.

Any check issued by a disbursing office in which the amount of the check and other data is "punched" on the check continues through the electronic equipment. It is ultimately subjected to stop-payment procedures if such procedures have been invoked in advance as to such check. But checks, such as those here in question, issued by a small disbursing office which is not equipped to "punch" this data, are temporarily ejected before reaching the electronic stop-payment procedure.

The purpose of such ejection is to permit a visual inspection of such checks to determine whether the amount has been raised, and whether they bear a signature. Such visual inspection, however, is not designed to discover whether the signature has been forged, since data invoking stop-payment procedures as to all checks where forgeries have been reported have been fed into the electronic equipment. If visual inspection of a temporarily rejected check reveals that it has a signature and the amount has not been raised, the check is placed back into the electronic equipment where it will ultimately reach the stop-payment procedures.

On March 8, 1961, the disbursing office here in question advised the Treasurer that certain blank Treasury checks, including the ones here in issue, were missing. On the following day, the electronic data processing division placed the regular electronic stop-payment procedures into effect as to those checks. On March 20 and 21, 1961, the checks in suit reached that division of the Treasurer's office. Because of a backlog of several million other Government checks already on hand, it was not until March 27, 1961, that the checks had been reached for examination by the electronic computer, temporarily ejected for visual inspection as described above, and replaced in the electronic data processing machines for further processing. On March 30, 1961, the stop-payment intercept placed in the equipment to watch for these missing checks located and ejected them. On that same day the division determined that the signature on each such check was a forgery. Later that day the Treasurer notified Reserve by telegram that the Treasurer was for this reason refusing payment of those checks.

Appellant argues that the March 27, 1961, visual inspection made of these checks when they were temporarily ejected for such inspection, constituted the "first examination" within the meaning of Section 25-(a)(4) of Circular 176, 31 C.F.R. § 202.25(e)(1)(iv). Appellants contend that since the Treasurer did not discover the forgery on that examination, but not until three days later, the Treasurer was not entitled under that regulation to reject the checks.

The district court held that the first examination constituted the entire processing of the checks from March 27 to 30.

"First examination," as used in Circular 176 includes examination for forged indorsement, forged signature of the drawer, raised amounts, and other material defects. In processing the great volume of checks which go through the Treasurer's office, for the purpose of discovering checks containing any such defects, it is reasonable and necessary to utilize electronic methods to the fullest extent possible, reserving visual inspection for discovery of defects which cannot be electronically discovered.

Rejection of forged checks could be handled electronically because stop-payment procedures could be fed into the machines. But visual inspection of checks from small disbursing offices was necessary to ascertain whether amounts had been raised and signatures were present, because small disbursing offices do not have the "punch" equipment which would have made possible electronic discovery of such defects. Acceptance of appellant's thesis would require that all defects covered by the first examination rule be discovered at the outset of the processing by either electronic or visual means, and obviously impracticable operation considering the vast number of checks being examined.

The trial court correctly concluded that the first examination constituted the entire processing of the checks from March 27 to 30.

Affirmed.

Memorandum Opinion for Use in Preparation of Proposed Findings of Fact, Conclusions of Law, and Judgment.

United States District Court, Southern District of California, Central Division.

Bank of America, National Trust and Savings Association, Plaintiff, vs. Federal Reserve Bank of San Francisco, Defendant. No. 62-1143-EC

United California Bank, Plaintiff, vs. Federal Reserve Bank of San Francisco, Defendant. No. 63-1058-EG

First Western Bank and Trust Company, a corporation, Plaintiff, vs. Federal Reserve Bank of San Francisco, Defendant. No. 63-1059-EC

The above entitled matters have heretofore been consolidated for trial.

In the Bank of America case, three checks are involved, to wit:

1. Check No. 277,458 in the amount of $8,276.66, to which one Carl Witten forged the name of "S. Goen" as the maker thereof.
2. Check No. 277,460 in the amount of $8,365.34, to which one Carl Witten forged the name of "S. Goen" as the maker thereof.
3. Check No. 277,482, in the amount of $8,023.66, to which one Carl Witten forged the name of "S. Goen" as the maker thereof.

In the First Western Bank and Trust Company case, but one check is involved. That check, numbered 277,-456, in the amount of $8,155.02 bore the name of "S. Goen" as the maker, which name had been forged by one Carl Witten.

In the United California Bank case, one check was involved, which check was numbered 277,462 in the amount of $8,655.65, to which check Carl Witten had forged the name of "S. Goen" as the maker thereof.

On March 6th or 7th, 1961, the said Carl Witten presented, endorsed and negotiated to the respective plaintiffs the said respective checks above described. Portions of the amounts of said checks were paid to the said Carl Witten in cash and portions deposited by the said Carl Witten in savings accounts in the respective banks. The said Witten received from the Bank of America in cash the total sum of $14,500.00 on the three checks negotiated by said plaintiff. He received $3,500.00 from the First Western Bank and Trust Company on check No. 277,456, and $3,785.38 from United California Bank on check No. 277,462.

It is agreed by the parties in the Pre-Trial Orders that in all cases the checks were received by the defendant Federal Reserve Bank in Los Angeles either March 7 or 8, 1961, and due credit was given the accounts of said plaintiff banks carried with defendant.

All checks were forwarded by defendant to the Treasurer of the United States in Washington, D. C., on March 13th or 14th, 1961. On March 8th or 9th, 1961, the Treasurer received notice that the checks here involved, among others, had been stolen. This information was given to the Check Claims Division of the Treasurer's office on March 9, 1961.

The said five checks involved were forwarded by the defendant to the Treasurer in Washington, D. C., on March 13th or 14th and duly charged by defendant to the account of the Treasurer. Said checks were received by the Treasurer on March 20th or 21st.

All other admitted facts as set forth in the Pre-Trial Order in each case are made a part of this opinion by reference.

From the evidence adduced at trial, it appears to the court that on March 27, 1961, the checks here involved were examined by the clerks of the Check Accounting Division of the Treasurer's office to ascertain if said checks had been altered as to amount and as to whether said checks bore a signature as maker. The checks were selected by electronic equipment for this examination. Later, and on March 30, 1961, the checks, after further processing through electronic equipment, were selected for examination by the Check Claims Division of the Treasurer's office as to whether the name of the maker had been forged. This was found to be the case and plaintiffs were notified by telegram and the checks forthwith returned to defendant, and the plaintiffs' accounts with defendant company were debited.

Circular 90 of the Regulations of the Federal Reserve Bank of San Francisco, which the parties agree is applicable in the instant actions, provides, among other things, with respect to Government checks, that they will be handled in accordance with Treasury Circular No. 176 (Title 31, Code of Federal Regulations, Chapter II, Sub-Chapter A, Section 202.25), hereafter referred to as paragraph 202.25. Circular 90 further provides, with respect to Government checks (page 4), that with respect to matters not covered by Circular 176:

> "the provisions of Regulation J and this circular and time schedules shall be deemed applicable to all Government checks. Credit for Government

checks will be given in accordance with this bank's time schedules and will be subject in all cases to examination and payment by or on behalf of the Treasurer of the United States."

Circular 90 is addressed "To the Member and Nonmember Clearing Banks of the Twelfth Federal Reserve District." The city of Los Angeles is within said district. The first sentence of said Circular states:

"Regulation J of the Board of Governors of the Federal Reserve System, this circular and time schedules prescribe the terms and conditions upon which this bank will receive and handle cash items for collection."

Under the heading of "Terms and Conditions of Collection" and on page 3 of Circular 90, it is provided, under paragraph (4), among other things, that any check presented by the Federal Reserve Bank to the *drawee bank* for payment or sent to said bank for collection and for which remittance or settlement is made by said bank on the day on which it receives said check then said check may be returned for credit or refund "at any time prior to midnight of the drawee's next business day following such day of receipt * * *." It is to be noted that there are four supplements to Circular 90, No. 3 of which is entitled "TIME SCHEDULES", which concerns the availability of credits. The court concludes that the term "time schedules", as referred to in the first sentence of Circular 90 and in the provisions on page (4) relating to "Government Checks", refers to the above mentioned "TIME SCHEDULES" Supplement 3 to said Circular 90.

Section 202.25(e)(1)(ii) of Title 31, as noted above, provides, among other things:

> "The Treasurer will return to the forwarding Federal Reserve Bank any check payment of which is refused upon first examination."

Paragraph (iv) of said Section provides:

> "In cases of checks raised or bearing a forged signature of the drawer, not discovered upon first examination by the Treasurer, and in other cases where the Treasurer's right to reclaim is in question, the checks will be forwarded to the Federal Reserve Bank as collection items with no charge in the account of the Federal Reserve Bank and credit will be given in the Treasurer's account only when payments are made by the indorsers of the checks."

The plaintiffs contend there is no provision in Circular 176 [paragraph 202.25] which refers to the time the Treasurer may have to make a first examination and return a check if refused and this point is therefore not covered by Circular 176 nor under the provisions of Circular 90 re Government Checks, and the provisions of Regulation J (quoted on pages 2 and 3 of Circular 90) shall therefore apply; that by reason of the application of Regulation J the Treasurer is required to make the said "first examination" and refuse a check by midnight of the day following the receipt thereof by the said Treasurer.

The court concludes that "drawee bank", as referred to in paragraph (4), Section 5, of Regulation J, as quoted on page 3 of Circular 90, does not include the Treasurer of the United States and that therefore the provision for return of checks as therein provided, to wit, prior to midnight of the next business day, is not

applicable where Government checks are involved. Furthermore, as noted above, it appears to the court that the "time schedules", referred to on page 4 of Circular 90 re Government checks, are the time schedules referred to above set forth as Supplement 3 to said Circular 90. If, as the court holds, paragraph (4) of Section 5, Regulation J, does not apply to the Treasurer re return of refused checks, then the time element there involved would likewise not apply to Government checks as referred to on page 4, Circular 90. That is to say, it appears to the court that the time element imposed on "drawee banks" for the return of checks does not apply to the Treasurer since he is required by regulation to return checks refused upon first examination without specific limitation as to time therefor. [Section 202.25(e)(1)(ii).] There being no provision in said Section 202.25, partially quoted hereinabove, for a time limit for the return by the Treasurer to the forwarding Federal Reserve Bank of "any check payment of which was refused upon first examination," *at most* the "midnight of the following day" rule would apply at the completion of first examination rather than date of receipt of the check by the Treasurer.

It is understandable that the fact the Treasurer is not bound by the "midnight of the following day" rule would come as a shock to banks, all of whom are bound by rigid statutes and Federal Reserve Bank regulations re return for credit of checks drawn on other banks as drawee. It is true that when the United States becomes a party to commercial paper it incurs the responsibilities of private persons in the same circumstances, and it follows that where the Treasurer accepts forged paper purporting to be its own and

pays the holder for value it cannot recall the payment. However, there appears to be no dispute but that the parties here are bound by the provisions of Circular 90 re the handling of Government checks. The fact the Treasurer has a great volume of checks to process each day should in no wise preclude the necessity that he comply with the pertinent regulations. Under the provisions of Section 202.25 (Circular 176), as noted above, if forgery of the name of the drawer is not discovered by the Treasurer upon first examination (§ 202.25(e)(1)(iv)), then no credit will be given by the Federal Reserve Bank to the Treasurer's account unless payment is made by the endorsers of the check. It is common knowledge that promptness in the processing of commercial paper is of the essence.

The determinative issue appears to resolve itself to the question of when was the "first examination." The regulations must be given a fair and reasonable interpretation in accordance with the apparent objective and intent of the drafter and with due regard to the language used and the purpose sought to be accomplished. By reason of the penalty for failure to discover a forged signature of the drawer on first examination as provided in Section 202.25(e)(1)(iv), it would appear it was contemplated that examination for such forgery be a part of the "first examination." The Government urges that the first examination involves the multiple handling of checks through electronic equipment and two inspections, in this case, an inspection as to whether the amount of the check had been raised and to determine whether the check bore a signature as drawer with a further inspection re whether the signature of the drawer was forged. These inspections are made on successive days or the interven-

ing of one day between same. This processing, the Government says, constitutes the "first examination."

The plaintiffs contend that the first inspection noted above (March 27) constitutes the "first examination" and the second inspection for forgery (March 30) made of the checks located and intercepted as stolen, was discovery of the forgery after the "first examination."

Having in mind all of the facts and circumstances here involved, it is the opinion of the court that the "first examination" was not made until completion of the inspection for a signature as drawer on the check, possible alteration as to amounts, and as to whether the signatures of the drawers were forged.

Since no specific time limitation is imposed by § 202.25 for the making of the first examination, it would follow it must be accomplished with reasonable dispatch. It appears to the court the examination was so accomplished and was within the terms of the applicable regulations.

At the risk of repetition, the court believes further comment is in order on the provisions of Circular 90 as they relate to Government checks, to wit, "* * * matters not covered by such circular * * *", referring to Circular 176, Regulation J and Circular 90. Return of refused checks by drawee banks is specifically covered by Section 5, Regulation J, (page 3, Circular 90) and return of refused checks by the Treasurer is specifically covered by § 202.25(e)(1)(ii). The drawee bank must return such checks prior to midnight of the following day and the Treasurer must return checks refused "upon first examination." Therefore, the return of checks by either drawee banks or the Treasurer

does not fall under the provision re "* * * matters not covered by such circular * * *", referred to above. As noted hereinabove, if the "midnight of the following day" rule is to be applied to all under the "matters not covered" theory, it would limit the time the Treasurer would have to return the checks to the forwarding bank after refusal "upon first examination." The rule, if so applied, was complied with by the Treasurer. The court does not conclude that return "upon first examination" under the "matters not covered" theory mean that the first examination and the return of a check by the Treasurer must be accomplished by midnight of the drawee's next business day.

It is to be noted that the defendant's counsel stated during the trial that all checks are deemed *"paid"* by the Treasurer and no recovery against the negotiating bank may be had if the check was not returned promptly after the first examination noted above, which is accomplished in two to three days.

The court concludes that for the foregoing reasons plaintiffs in each of the above-entitled actions shall take nothing by their complaints and that the defendant is entitled to judgment in each case for its costs.

Defendant's counsel is requested to prepare, serve and lodge with the court proposed Findings of Fact, Conclusions of Law and Judgment in accordance with Rule 7, as amended, of the Local Rules of this court.

This Memorandum Opinion is not a final Judgment.

Dated: June 19, 1964.

E. Avery Crary,
E. Avery Crary
United States District Judge

APPENDIX B.

31 CFR 202.25 (e) (1) (i) (ii) (1949-Rev. Jan. 1, 1965):

(e) Government checks cashed or otherwise received by Federal Reserve Banks will be handled as follows:

(1) Checks drawn on the Treasurer of the United States, other than checks payable through designated Federal Reserve Banks, will be handled as follows:

(i) The Federal Reserve Bank will forward all checks charged in his account to the Treasurer of the United States at Washington, D. C., for payment.

(ii) The Treasurer will return to the forwarding Federal Reserve Bank any check payment of which is refused upon first examination. Such Federal Reserve Bank will be expected to give immediate credit therefor in the Treasurer's account, thereby reversing the previous charge in his account for such check; but, if the check is required for use in connection with a criminal investigation or legal proceeding, the check will be retained by the Treasurer for that purpose, and a photographic copy of the face and back will be forwarded to the Federal Reserve Bank."

31 CFR 202.25 (e) (1) (iv) (1949-Rev. Jan. 1, 1965):

(iv) In cases of checks raised or bearing a forged signature of the drawer, not discovered upon first examination by the Treasurer, and in other cases where the Treasurer's right to reclaim

is in question, the checks will be forwarded to the Federal Reserve Bank as collection items with no charge in the account of the Federal Reserve Bank and credit will be given in the Treasurer's account only when payments are made by the indorsers of the checks. A photographic copy may be returned in lieu of the check if the latter is required for use in connection with a criminal investigation or legal proceeding."

12 CFR 210.5 (d) (1949-Rev. Jan. 1, 1963):

"Any check which a Federal Reserve bank or an agent thereof presents to the drawee bank for payment or sends to the drawee bank for collection, and for which remittance or settlement is made by the drawee bank on the day on which it receives such check, may be returned for credit or refund at any time prior to midnight of the drawee's next business day following such day of receipt or prior to the time provided by applicable clearing house rule or special collection agreement, whichever is earlier, except that this paragraph shall not apply to checks presented over the counter."